IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ATEN INTERNATIONAL CO., LTD. and ATEN TECHNOLOGY, INC. Plaintiff, v. EMINE TECHNOLOGY CO., LTD., BELKIN INTERNATIONAL, INC., and BELKIN, INC. Defendants.	)))))))))))	Civil Action No. 2:08-cv-00253 DF JURY TRIAL DEMANDED

DEFENDANTS BELKIN INTERNATIONAL, INC. AND BELKIN, INC.'S ANSWER TO FIRST AMENDED COMPLAINT AND COUNTERCLAIMS

Defendants Belkin International, Inc. and Belkin, Inc. (collectively "Belkin") answer the First Amended Complaint ("complaint")of plaintiffs ATEN International Co., Ltd. and ATEN Technology, Inc. (collectively "ATEN") as follows:

1. Answering paragraph 1 of the complaint, Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

2. Answering paragraph 2 of the complaint, Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations contained therein.

3. Answering paragraph 3 of the complaint, Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations contained therein.

4. Answering paragraph 4 of the complaint, Belkin admits that Belkin International, Inc. and Belkin, Inc. are corporations organized under the laws of the state of Delaware with their principal place of business in Compton, California. Belkin admits that it has conducted business and has offered to sell and has sold products to customers in this judicial district and throughout Texas. Belkin denies that it has offered to sell or sold any products that infringe any

claims of U.S. Patent No. 6,564,275 ("the ’275 patent"). Except as expressly admitted above, Belkin denies each and every allegation of paragraph 4 of the complaint.

5. Answering paragraph 5 of the complaint, with respect to all allegations relating to Emine Technology Co., Ltd. ("Emine"), Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. Belkin admits that ATEN has brought a patent infringement action arising under the United States Patent Laws, 35 U.S.C. § 100 *et seq*. including 35 U.S.C. § 271. Belkin further admits that what appears to be copies of U.S. Patent No. 7,035,112 ("the ’112 patent") and the '275 patent are attached to the complaint as Exhibits A and B, respectively, but denies all allegations of patent infringement. Except as expressly admitted above, Belkin denies each and every allegation of paragraph 5 of the complaint.

6. Answering paragraph 6 of the complaint, Belkin admits that this Court has subject matter jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1338(a).

7. Answering paragraph 7 of the complaint, with respect to all allegations relating to Emine, Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. Belkin admits that it is subject to personal jurisdiction in the Eastern District of Texas, but denies ATEN’s allegations of patent infringement. Except as expressly admitted above, Belkin denies each and every allegation of paragraph 7 of the complaint.

8. Answering paragraph 8 of the complaint, with respect to all allegations relating to Emine, Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. Belkin admits that venue is facially proper as to it in this district based upon ATEN's allegation that Belkin has committed infringing acts within this district, but denies that this district is the most appropriate venue for this dispute, and also denies Aten’s allegations of patent infringement. Except as expressly admitted above, Belkin denies each and every allegation of paragraph 8 of the complaint.

9. Answering paragraph 9 of the complaint, Belkin admits that on its face the ’112 patent states that it issued on April 25, 2006 to Kevin Chen, and that it is entitled “AUTOMATIC SWITCH.” Belkin lacks knowledge or information sufficient to form a belief

about the truth of the remaining allegations of paragraph 9 the complaint. Except as expressly admitted above, Belkin denies each and every allegation of paragraph 9 of the complaint.

10. Answering paragraph 10 of the complaint, Belkin admits that to its knowledge, only two companies have settled litigation brought against them by ATEN by taking "licenses" under the '112 patent; but denies that such litigation settlements constitute either "acknowledgement" or "appreciation" of the "invention in the '112 patent;" and denies any other allegations of paragraph 10 of the complaint.

11. Answering paragraph 11 of the complaint, Belkin admits that to its knowledge RATOC Systems Inc. is one of the two companies that have entered into litigation settlements with ATEN; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

12. Answering paragraph 12 of the complaint, Belkin admits that to its knowledge JustCom Tech, Inc. is the other of the two companies that have entered into litigation settlements with ATEN; Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations contained therein.

13. Answering paragraph 13 of the complaint, Belkin admits that on its face the ’275 patent states that it issued on May 13, 2003 to Sun Chung Chen, and that it is entitled “ELECTRONIC SWITCHING DEVICE FOR A UNIVERSAL SERIAL BUS INTERFACE.” Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 13 the complaint.

14. Answering paragraph 14 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

15. Answering paragraph 15 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations contained therein.

16. Answering paragraph 16 of the complaint, Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations contained therein.

17. Belkin denies each and every allegation contained in paragraph 17 of the complaint.

18. Belkin denies each and every allegation contained in paragraph 18 of the complaint.

19. Belkin denies each and every allegation contained in paragraph 19 of the complaint.

20. Belkin incorporates the answers to paragraphs 1 through 19 of the complaint as though fully and completely set forth herein.

21. Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 of the complaint.

22. Answering paragraph 22 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein..

23. Answering paragraph 23 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International

Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

24. Answering paragraph 24 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

25. Belkin incorporates the answers to paragraphs 1 through 24 of the complaint as though fully and completely set forth herein.

26. Answering paragraph 26 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin admits that at least as of the filing date of the complaint Emine would have been aware of the '112 patent; Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26 of the complaint.

27. Answering paragraph 27 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

28. Answering paragraph 28 of the complaint, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International

Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained therein.

29. Belkin incorporates the answers to paragraphs 1 through 28 of the complaint as though fully and completely set forth herein.

30. Belkin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of the complaint.

31. Answering paragraph 31, with respect to all allegations relating to Emine, Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. As to the remaining allegations, Belkin denies each and every allegation of paragraph 31 of the complaint.

32. Answering paragraph 32, with respect to all allegations relating to Emine, Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. As to the remaining allegations, Belkin denies each and every allegation of paragraph 32 of the complaint.

33. Answering paragraph 33, with respect to all allegations relating to Emine, Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. As to the remaining allegations, Belkin denies each and every allegation of paragraph 33 of the complaint.

34. Belkin incorporates the answers to paragraphs 1 through 33 of the complaint as though fully and completely set forth herein.

35. Answering paragraph 35, with respect to all allegations relating to Emine, Belkin lacks knowledge or information sufficient to form a belief about the truth of those allegations. Belkin admits that it now has knowledge of the ’275 patent as of the date of service upon it of the complaint; but denies that it had either actual or constructive knowledge of the ’275 patent before that time. As to the remaining allegations, Belkin denies each and every allegation of paragraph 35 of the complaint.

36. Answering paragraph 36, with respect to all allegations relating to Emine, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of any other allegations as to Emine. As to the remaining allegations, Belkin denies each and every allegation of paragraph 36 of the complaint.

37. Answering paragraph 37, with respect to all allegations relating to Emine, Belkin is informed and believes that the products which ATEN is accusing Emine of infringement in this action were the same or substantially the same products which were found not to infringe the '112 patent in International Trade Commission Investigation 337-TA-589, and therefore on information and belief Belkin denies the allegations as to such Emine products; Belkin lacks knowledge or information sufficient to form a belief about the truth of any other allegations as to Emine. As to the remaining allegations, Belkin denies each and every allegation of paragraph 37 of the complaint, and specifically denies that ATEN has been, or will be, damaged in any manner or sum, or at all, as a result of any wrongful action on the part of Belkin.

38. In answer to paragraph 38 of the complaint, Belkin admits that ATEN has demanded a trial by jury on all issues.

AFFIRMATIVE DEFENSES

As for separate and affirmative defenses, Belkin alleges as follows:

39. Belkin incorporates here the foregoing admissions, denials, and allegations.

FIRST AFFIRMATIVE DEFENSE

40. The '112 and ’275 patents are invalid for failing to comply with one or more requirements of the patent laws of the United States, including, but not limited to, the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and 112.

SECOND AFFIRMATIVE DEFENSE

41. Belkin has not and is not infringing, and has not and is not contributing to or inducing the infringement of, either the '112 or ’275 patents.

THIRD AFFIRMATIVE DEFENSE

42. ATEN is estopped by representations or actions taken during the prosecution of the '112 and ’275 patents which limits the literal and equivalent scope of the claims of those patents under the doctrines of prosecution disclaimer and prosecution history estoppel.

FOURTH AFFIRMATIVE DEFENSE

43. ATEN's claim for damages, if any, is limited by 35 U.S.C. § 287.

FIFTH AFFIRMATIVE DEFENSE

44. On information and belief, ATEN is barred in whole or in part from asserting the '112 and ’275 patents against Belkin by the doctrine of laches, or waiver, or both.

COUNTERCLAIMS

Belkin asserts counterclaims against ATEN as follows:

JURISDICTION AND VENUE

45. Belkin’s Counterclaims arise under 28 U.S.C. §§ 2201 and 2202, and Belkin seeks declaratory relief as well as further relief based upon a declaratory judgment or decree. In the First Counterclaim, Belkin seeks a judicial declaration that it does not infringe United States patents. In the Second Counterclaim, Belkin seeks a judicial declaration that United States patents are invalid and/or are not enforceable.

46. Venue as to these counterclaims is proper in this district because ATEN has submitted to this Court’s jurisdiction by the filing of the Complaint in this action.

FIRST COUNTERCLAIM

(For Declaratory Judgment of Patent Non-Infringement)

47. Belkin incorporates here the foregoing admissions, denials, and allegations.

48. An actual controversy exists between Belkin and ATEN as to whether Belkin infringes, contributes to the infringement of, or induces infringement of the '112 and ’275 patent, as ATEN contends, or does not do so, as Belkin contends.

49. By this Counterclaim, Belkin seeks a declaration that it has not infringed and does not infringe the '112 and ’275 patents either literally or under the doctrine of equivalents. Further, Belkin seeks a declaration that it has not contributed to or induced and does not contribute to or induce infringement of the '112 and ’275 patents by anyone. A judicial declaration is necessary and appropriate at this time in order that Belkin may ascertain its rights and duties with respect to the '112 and ’275 patents and with respect to any past, present, or future manufacture, use, importation, distribution, sale, or offer for sale of its products.

SECOND COUNTERCLAIM

(For Declaratory Judgment of Patent Invalidity/Unenforceability)

50. Belkin incorporates here the foregoing admissions, denials, and allegations.

51. An actual controversy exists between Belkin and ATEN as to whether the '112 and ’275 patents are valid, as ATEN contends, or is invalid for failure to comply with the requirements of patentability set forth in 35 U.S.C. §§ 101 *et seq*., as Belkin contends.

52. By this Counterclaim, Belkin seeks a declaration that the '112 and ’275 patents are invalid and/or are unenforceable. A judicial declaration is necessary and appropriate at this time in order that Belkin may ascertain its rights and duties with respect to the '112 and ’275 patents and to any past, present, or future manufacture, use, importation, distribution, sale, or offer of its products.

PRAYER FOR RELIEF

WHEREFORE, Belkin prays for judgment as follows:

1. That ATEN take nothing by its Complaint and that its Complaint be dismissed;

2. That the Court determine and declare that Belkin and its products have not infringed and do not infringe the '112 or ’275 patents;

3. That the Court declare that Belkin has not contributed to or induced and does not contribute to or induce infringement of the '112 or ’275 patents by anyone;

4. That the Court declare that the '112 and ’275 patents are invalid and/or unenforceable;

5. That the Court award Belkin its attorneys’ fees and litigation expenses under 28 U.S.C. § 1927 and 35 U.S.C. § 285 or on any other applicable basis;

6. That the Court award Belkin its costs of suit; and

7. That Belkin receive such other and further relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Belkin requests a trial by jury of all issues properly decided by a jury.

Respectfully submitted,

October 27, 2008

/s/ Robert W. Dickerson
Robert W. Dickerson, CA Bar No. 089367
Email rdickerson@orrick.com
Yasser El-Gamal, CA Bar No. 189047
Email ymel-gamal@orrick.com
Orrick, Herrington & Sutcliffe LLP
777 S. Figueroa Street, Suite 3200
Los Angles, CA 90017-5855
tel. 213-612-2472
fax 213-612-2499

LANCE LEE
Texas Bar No. 240004762
Email wlancelee@aol.com
YOUNG, PICKETT & LEE
4122 Texas Blvd.
P.O. Box 1897
Texarkana, Texas 75504
tel. 903-794-1303
fax 903-792-5098

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to FED.R.CIV.P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy via email transmission, facsimile and/or U.S. Mail this 28th day of October, 2008.

/s/Yasser M. El-Gamal